

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL WOODS and U.S. POSTAL SERVICE,
MEMPHIS BULK MAIL CENTER, Memphis, TN

*Docket No. 00-2620; Submitted on the Record;
Issued July 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has reviewed the case record and finds that the Office abused its discretion in refusing to reopen appellant's case for further reconsideration of the merits.

On December 12, 1995 appellant, then a 39-year-old mailhandler, filed a notice of occupational disease, claiming that her depression, anxiety and high blood pressure was caused by her supervisor at work. In support of her claim, she submitted a history of events between herself and her supervisor which she believed caused her condition, a note dated December 6, 1995 from Dr. Nora Reyes, a Board-certified psychiatrist and neurologist, excusing her from work until further notice and emergency room documents dated November 12, 1995 and December 4, 1995, indicating that appellant was treated for atypical chest pain and diagnosed with "depression with anxiety."

By letter dated January 8, 1996, the Office requested that appellant submit additional factual and medical information.

Appellant submitted responses to the Office's questions, a psychiatric evaluation by Dr. Reyes dated December 6, 1995, several job descriptions, an emergency room treatment note, a November 15, 1995 treatment note from Dr. Samuel T. Verzosa, and several return to work releases from Dr. Dean King. Dr. Reyes, in her December 6, 1995 report, discussed appellant's history of anxiety and stress at work and diagnosed appellant with "psychological stressors secondary to work relationship." The Office also received responses from appellant's supervisor.

By decision dated August 6, 1996, the Office denied appellant's claim since the evidence of file failed to establish that the injury occurred in the performance of duty.

By letter dated September 5, 1996, appellant requested an oral hearing, which was held on July 24, 1997.

Appellant also submitted a clinical report dated June 14, 1997 from Dr. Antoine Jean-Pierre, a Board-certified psychiatrist and neurologist, who stated:

“[Appellant] has been exposed to an endless shift of assignments, displacements, punishments, undue harassment for a period exceeding a year and a half to two years.

“Work factors consisted of multiple assignments with unavoidable punishment, emotional abuses are the direct causes of her disability. By multiple daily reports and interaction it is evident that the supervisor has exerted such machiavellian and authoritarian power and [appellant] is a passive scapegoat.

“The level of intimidation created a cycle of fears that going to work and entering the work environment precipitate panic attacks with tremors of the hands, sweats, palpitations, headaches with consequences of blood pressure elevations.”

By decision dated October 28, 1997, the hearing representative affirmed the Office’s August 6, 1996 decision. The hearing representative accepted multiple work assignments and backlogs as compensable factors in addition to a chemical substance which got on her hands.

By letter dated October 27, 1998, appellant requested reconsideration. She submitted an updated clinical report from Dr. Jean-Pierre dated October 21, 1998.

By decision dated January 26, 1999, the Office denied modification of the prior decision.

By letter dated January 26, 2000, appellant requested reconsideration. She did not submit any new evidence but alleged that the Office, in its January 26, 1999 decision, did not identify any of appellant’s allegations as factual, when the hearing representative did in fact identify a compensable work factor. Appellant also alleged that Dr. Jean-Pierre based his findings on this specific work factor identified by the hearing representative in his October 28, 1997 decision.

In a nonmerit decision dated June 6, 2000, the Office denied appellant’s request for review.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Because more than one year has elapsed between the issuance of the Office’s January 26, 1999 merit decision and August 16, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the January 26, 1999 decision and any preceding decisions. Therefore, the only decision before the Board is the Office’s June 6, 2000 nonmerit decision denying appellant’s application for a review of its January 26, 1999 decision.

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Section 8128(a) of the Federal Employees' Compensation Act² does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation. Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶

In support of her January 26, 2000 request for reconsideration, appellant argued that the Office, in its January 26, 1999 decision, the last merit review, failed to address the compensable work factors that the hearing representative had accepted as factual. She also contended that Dr. Jean-Pierre based his medical findings on these particular work factors. Appellant has advanced a relevant legal argument not considered by the Office in its last merit review. The Board finds that the Office, in its June 6, 2000 decision, abused its discretion by not granting appellant a full merit review.

² 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.606.

⁵ 20 C.F.R. § 10.607.

⁶ 20 C.F.R. § 10.608.

The June 6, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office to conduct a merit review in accordance with this decision.

Dated, Washington, DC
July 25, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member